BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

ALLEN J. MELANCON
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-88
Case No. 69-2287

S.S.A. No.

NORTH AMERICAN ROCKWELL CORPORATION
AEROSPACE & SYSTEMS GROUP
(Employer)

Employer Account No.

The employer appealed from Referee's Decision No. LB-18552 which held that the claimant voluntarily left his most recent work with good cause within the meaning of section 1256 of the Unemployment Insurance Code and that the employer's account was not relieved of benefit charges under section 1032 of the code.

STATEMENT OF FACTS

The claimant was employed by the employer for 12 years. At first he worked as an instrument precision repairman and then in September 1959 he was advanced to the position of test and development lab associate. Over the years of his employment the claimant's income had gradually increased by reason of cost of living and general wage increases. From May 21, 1968 until his last day of work on February 21, 1969 the claimant earned $4.32 an hour as a test and development lab associate.

On January 17, 1969 the claimant was notified that he would be laid off on February 21. He made efforts to find other work with the same employer in his own and

other divisions but was unsuccessful. In addition, he made contacts for work with various other employers in the area and either received no response or was told that there were no openings.

On February 21, 1969 the employer offered the claimant a downgrade to the job of instrument precision repairman at an hourly rate of $3.84 in the same department on the same shift and under the same supervision as he had worked as a test and development lab associate. The claimant would have suffered no loss of skills, although there would have been a slight change in duties. He had last worked as an instrument precision repairman in February of 1959. He had last worked for a wage as low as $3.84 an hour on October 2, 1966, at which time he was given a general increase from $3.82 to $3.91 an hour.

The claimant refused the downgrade because, as his pay had increased over the years, his living standards had gone up and he felt he could not afford to take a cut in wages which was almost 50 cents an hour. The claimant found work as a department store salesman during the latter part of April 1969, for which he was paid on a commission basis with a draw against commissions of $90 a week. The claimant testified he took this work because he could find nothing else and could not go on without any money coming in.

When the claimant had held the position of an instrument precision repairman, it had not been covered by the collective bargaining agreement between the employer and the union representing hourly employees. At the time the claimant refused transfer back to that work the position had been brought under the provisions of the collective bargaining agreement. The claimant's former position of test and development lab associate remained unaffected by the collective bargaining agreement. The claimant would not have lost any rights to be recalled as a test and development lab associate. As an instrument precision repairman he would not have been entitled to 12 years' seniority under the collective bargaining agreement. His seniority to apply for new work would have begun to be counted only from the time he joined the union. The claimant testified that being required to be a union member played no part in his

decision and that his main reason for preferring to be laid off was that "he could not afford a downgrade because my standards of living had increased over the years."

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides that an individual is disqualified for benefits and sections 1030 and 1032 of the code provide that an employer's reserve account may be relieved of benefit charges if the individual left his most recent work voluntarily and without good cause.

A claimant who has elected to give up employment rather than accept a reclassification or transfer to another position with the same employer must be deemed to have voluntarily left his work rather than to have refused an offer of new work. Since the claimant herein rejected an offer of transfer to a lower classification, the matter becomes one of a voluntary leaving and the issue of good cause is before us.

We held in Appeals Board Decision No. P-B-27 that there is good cause for the voluntary leaving of work where the facts disclose a real, substantial and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action.

Good cause for leaving work must necessarily be judged as of the time of leaving.

In Benefit Decision No. 6633 the claimant was aware at the time of the layoff that another aircraft manufacturer was hiring men with the claimant's experience. A fellow employee of the claimant, who was laid off by the same employer shortly before the claimant, had been employed by the other employer at an increased rate of pay. The claimant had applied for work with the other employer and it could reasonably be anticipated that he could obtain work with that employer.

In Benefit Decision No. 6639, prior to the layoff, the claimant had applied for work with another aircraft manufacturer. His application was being considered and there were substantial prospects that he would obtain work with the second employer at a rate of pay comparable to the rate he was receiving from his present employer.

In Benefit Decision No. 6640 the claimant, a lathe machinist, had a high degree of skill which he would have had to abandon in order to accept the employer's proffered transfer to work as an operator. He had a reasonable basis for believing that he would soon obtain work at his highest scale, since lathe machinists were in demand. As a machinist he was not restricted to work at aircraft companies.

In each of the above decisions we held that the claimant therein had good cause to leave his work. Each decision pointed out, however, that the extent of the reduction in pay was only one factor in determining whether or not the claimants therein left work with good cause when they elected to give up employment rather than accept transfers to another position with the same employer. The factors other than wage reduction appearing in these cases and which bear upon the decisions are:

1. The claimant's prospects for securing other work at a wage commensurate with his prior earnings;

2. Whether the claimant was aware of the labor market as it affected him;

3. The comparative skills required.

Among the other factors we have also considered are:

1. Substantial prospects of other employment based upon objective facts known at the time of election;

2. The distance and cost of commuting;

3. Loss of seniority and recall rights;

4. Opportunities for advancement in the lower classification.

A review of our decisions makes it apparent that no justification exists for any presumed rule of thumb that a reduction in wages of ten percent is not good cause for leaving work but anything over ten percent is good cause without reference to the other factors presented in the particular case. We have stated time and again that there can be no mechanical rule for determining whether good cause exists for leaving work. The leaving must be measured by the reasonableness of the separation in the light of all the circumstances existing at the time the claimant is offered a downgrade in lieu of layoff.

In the instant case, before deciding to accept the layoff instead of a transfer to work as an instrument precision repairman, the claimant informed himself of his prospects to secure other work at a wage commensurate with his prior earnings and knew such prospects were not good. The offered work as a repairman did not deprive the claimant of any skills needed to function as a test and development lab associate. The claimant would have retained all rights to be recalled as such associate and had no seniority rights under the collective bargaining agreement to lose. His decision to take the layoff was based solely on a wage reduction of approximately 11.2 percent at a time when he was fully aware he had no prospects of other work. Under the circumstances of this case we find that the reduction in pay did not constitute a compelling reason for leaving work when all the other factors existing at that time favored continued employment as the best alternative. Accordingly, we hold that the claimant left his most recent work voluntarily without good cause.

DECISION

The decision of the referee is reversed. The claimant is disqualified for benefits under section 1256 of the code. The employer's reserve account is not subject to benefit charges under section 1032 of the code.

Sacramento, California, December 3, 1970

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

JOHN B. WEISS

CONCURRING - Written Opinion Attached

LOWELL NELSON

DON BLEWETT

CONCURRING OPINION

We subscribe to the conclusion arrived at in this decision. We also agree that in deciding whether a claimant had good cause to leave work rather than to accept a downgrade in lieu of layoff no mechanical rule may be developed to be applied in each and every case. All of the circumstances existing at the time the claimant makes his decision to leave work, as well as the factors which the claimant took into consideration in arriving at his decision, must be considered.

In our opinion the chief circumstance or factor which must be evaluated in deciding whether good cause exists for the claimant's leaving work is the reduction in wage attended upon the downgrade. We say this because we believe that the main consideration the average man has for working is to derive from his services an income; and, if an income or wage is significantly reduced because of a transfer, then, in our opinion, good cause would exist for leaving work.

We are not at this point prepared to define what we mean by a significant reduction in wage. As has been said time and again, each case must be decided on the particular facts of the case. It is conceivable, in our opinion, that a significant reduction in wage might, combined with other factors, be equal to five percent. It is likewise conceivable that a reduction in wage of 15 percent would, combined with other factors, be insignificant. What we are saying is that in addition to the seven factors listed in this decision, we must consider the factor of wages and accord this factor greater weight than the others.

In evaluating the amount of reduction in wages which a claimant might suffer if he accepted a downgrade, we should not only look at the immediate reduction, but we should also consider whether or not the claimant has, over a significant period of time immediately preceding the last offer of downgrade, suffered successive reductions in wages. If so, we believe that the total amount of wage reduction the claimant has suffered should be considered.

Finally, it should be pointed out that in ascertaining the condition of the labor market, the Department of Human Resources Development has seen fit to designate certain of its professional employees to work on a full-time basis at this activity. How can we expect the average claimant for unemployment insurance benefits to know what the labor market conditions are when not only the Department, but many other governmental agencies, as well as private agencies, employ professional people to make such evaluation. We do not believe that the average claimant is qualified to make an objective evaluation of the labor market, especially on a few days' notice.

LOWELL NELSON

DON BLEWETT